

1 H.196
2 Introduced by Representatives Trieber of Rockingham, Young of Glover,
3 Copeland-Hanzas of Bradford, Bartholomew of Hartland, Beck
4 of St. Johnsbury, Belaski of Windsor, Briglin of Thetford,
5 Buckholz of Hartford, Burke of Brattleboro, Christie of
6 Hartford, Cina of Burlington, Colburn of Burlington, Connor of
7 Fairfield, Deen of Westminster, Donovan of Burlington, Dunn
8 of Essex, Fields of Bennington, Gonzalez of Winooski, Hebert
9 of Vernon, Hill of Wolcott, Hooper of Brookfield, Howard of
10 Rutland City, Krowinski of Burlington, Lippert of Hinesburg,
11 Long of Newfane, Macaig of Williston, Masland of Thetford,
12 McCormack of Burlington, McCullough of Williston, McFaun
13 of Barre Town, Miller of Shaftsbury, Morris of Bennington,
14 Mrowicki of Putney, O’Sullivan of Burlington, Partridge of
15 Windham, Poirier of Barre City, Pugh of South Burlington,
16 Rachelson of Burlington, Sharpe of Bristol, Squirrell of
17 Underhill, Stevens of Waterbury, Stuart of Brattleboro, Sullivan
18 of Burlington, Till of Jericho, Toleno of Brattleboro, Troiano of
19 Stannard, Walz of Barre City, Webb of Shelburne, Weed of
20 Enosburgh, Willhoit of St. Johnsbury, Wood of Waterbury, and
21 Yantachka of Charlotte

1 Referred to Committee on

2 Date:

3 Subject: Labor; employment practices; paid family leave

4 Statement of purpose of bill as introduced: This bill proposes to create a
5 Family Leave Insurance Program within the Department of Labor that will
6 provide employees with 12 weeks of paid family leave and that will be funded
7 by contributions from employers and employees. This bill also proposes to
8 amend Vermont's existing family leave law to make it applicable to all
9 employers, to clarify certain provisions.

10 An act relating to paid family leave

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 ~~Sec. 1. 21 V.S.A. § 471 is amended to read:~~

13 § 471. DEFINITIONS

14 As used in this subchapter:

15 (1) "Employer" means an individual, organization or governmental
16 body, partnership, association, corporation, legal representative, trustee,
17 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
18 air or express company doing business in or operating within this State which
19 ~~for the purposes of parental leave, employs 10 or more individuals who are~~

1 ~~employed for an average of at least 30 hours per week during a year and for~~
2 ~~the purposes of family leave, employs 15 or more individuals for an average of~~
3 ~~at least 30 hours per week during a year.~~

4 (2) "Employee" means a person who, in consideration of direct or
5 indirect gain or profit, ~~has been continuously employed by the same employer~~
6 ~~for a period of one year for an average of at least 30 hours per week is~~
7 employed by an employer and has been employed in Vermont for at least six
8 of the previous 12 months.

9 (3) "Family leave" means a leave of absence from employment by an
10 employee who works for an employer which employs 15 or more individuals
11 who are employed for an average of at least 30 hours per week during the year
12 for one of the following reasons:

13 (A) the serious illness of the employee; or

14 (B) the serious illness of the employee's child, stepchild or ward who
15 lives with the employee, foster child, parent, grandparent, sibling, spouse, or
16 parent of the employee's spouse;

17 (4) "Parental leave" means a leave of absence from employment by an
18 employee who works for an employer which employs 10 or more individuals
19 who are employed for an average of at least 30 hours per week during the year
20 for one of the following reasons:

21 ~~(C) the employee's pregnancy,~~

1 ~~(D) the birth of the employee's child; or~~

2 ~~(B)(E) the initial placement of a child 16 years of age or younger~~
3 ~~with the employee for the purpose of adoption or foster care.~~

4 ~~(5)(4) "Serious illness" means an accident, disease, or physical or~~
5 ~~mental condition that:~~

6 ~~(A) poses imminent danger of death;~~

7 ~~(B) requires inpatient care in a hospital; or~~

8 ~~(C) requires continuing in-home care under the direction of a~~
9 ~~physician.~~

10 ~~(5) "Commissioner" means the Commissioner of Labor.~~

11 Sec. 2. 21 V.S.A. § 472 is amended to read:

12 § 472. FAMILY LEAVE

13 (a) During any 12-month period, an employee shall be entitled to take
14 ~~unpaid leave for a period not to exceed 12 weeks up to 12 weeks of paid~~
15 ~~family leave using Family Leave Insurance benefits pursuant to section 472c~~
16 ~~of this subchapter for the following reasons:~~

17 ~~(1) for parental leave, during the employee's pregnancy and;~~

18 ~~(2) following the birth of an the employee's child or;~~

19 ~~(3) within a year following the initial placement of a child 16 years of~~
20 ~~age or younger with the employee for the purpose of adoption, or foster care;~~

21 ~~(2)(4) for family leave, for the serious illness of the employee, or~~

1 ~~(5) the serious illness of the employee's child, stepchild or ward of the~~
2 employee who lives with the employee, foster child, parent, grandparent,
3 sibling, spouse, or parent of the employee's spouse.

4 (b) During the leave, at the employee's option, the employee may use
5 accrued sick leave or vacation leave or any other accrued paid leave, ~~not to~~
6 ~~exceed six weeks.~~ Utilization Use of accrued paid leave shall not extend the
7 leave provided ~~herein~~ by this section.

8 (c) The employer shall continue employment benefits for the duration of
9 the family leave at the level and under the conditions coverage would be
10 provided if the employee continued in employment continuously for the
11 duration of the leave. The employer may require that the employee contribute
12 to the cost of the benefits during the leave at the employee's existing rate of
13 employee contribution.

14 (d) The employer shall post and maintain in a conspicuous place in and
15 about each of ~~his or her~~ its places of business printed notices of the provisions
16 of this subchapter on forms provided by the Commissioner of Labor.

17 (e)(1) An employee shall give his or her employer reasonable written
18 notice of intent to take family leave under this subchapter. Notice shall
19 include the date the leave is expected to commence and the estimated duration
20 of the leave.

21 ~~(2) In the case of the adoption or birth of a child, an employer shall not~~

1 ~~require that notice be given more than six weeks prior to the anticipated~~
2 commencement of the leave.

3 (3) In the case of an unanticipated serious illness or premature birth, the
4 employee shall give the employer notice of the commencement of the leave as
5 soon as practicable.

6 (4) In the case of serious illness of the employee or a member of the
7 employee's family, an employer may require certification from a physician to
8 verify the condition and the amount and necessity for the leave requested.

9 (5) An employee may return from leave earlier than estimated upon
10 approval of the employer.

11 (6) An employee shall provide reasonable notice to the employer of his
12 or her need to extend the leave to the extent provided by this chapter.

13 ~~(f) Upon return from leave taken under this subchapter, an employee shall~~
14 ~~be offered~~ An employer shall offer an employee who has been employed by
15 the employer for at least 12 months and is returning from family leave taken
16 under this subchapter the same or a comparable job at the same level of
17 compensation, employment benefits, seniority, or any other term or condition
18 of the employment existing on the day the family leave began. This
19 subchapter shall not apply if, prior to requesting leave, the employee had been
20 given notice or had given notice that the employment would terminate. This
21 ~~subsection shall not apply if the employer can demonstrate by clear and~~

1 ~~convincing evidence that:~~

2 (1) during the period of leave, the employee's job would have been
3 terminated or the employee laid off for reasons unrelated to the leave or the
4 condition for which the leave was granted; or

5 (2) the employee performed unique services and hiring a permanent
6 replacement during the leave, after giving reasonable notice to the employee of
7 intent to do so, was the only alternative available to the employer to prevent
8 substantial and grievous economic injury to the employer's operation.

9 (g) An employer may adopt a leave policy more generous than the leave
10 policy provided by this subchapter. Nothing in this subchapter shall be
11 construed to diminish an employer's obligation to comply with any collective
12 bargaining agreement or any employment benefit program or plan which
13 provides greater leave rights than the rights provided by this subchapter. A
14 collective bargaining agreement or employment benefit program or plan may
15 not diminish rights provided by this subchapter. Notwithstanding the
16 provisions of this subchapter, an employee may, at the time a need for parental
17 or family leave arises, waive some or all the rights under this subchapter
18 provided the waiver is informed and voluntary and any changes in conditions
19 of employment related to any waiver shall be mutually agreed upon between
20 employer and employee.

21 ~~(h) Except for serious illness of the employee, an employee who does not~~

1 ~~return to employment with the employer who provided the family leave shall~~
2 return to the employer the value of any compensation paid to or on behalf of
3 the employee during the leave, except payments of Family Leave Insurance
4 benefits and payments for accrued sick leave or vacation leave. An employer
5 may elect to waive the rights provided pursuant to this subsection.

6 Sec. 3. 21 V.S.A. § 472c is added to read:

7 § 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

8 ADMINISTRATION

9 (a) The Family Leave Insurance Program is established in the Department
10 of Labor for the provision of Family Leave Insurance benefits to eligible
11 employees pursuant to this section.

12 (b) The Family Leave Insurance Special Fund is created pursuant to
13 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the
14 Commissioner for the administration of the Family Leave Insurance Program
15 and payment of Family Leave Insurance benefits provided pursuant to this
16 section.

17 (c)(1) The Fund shall consist of contributions equal to 0.93 percent of each
18 employee's wages, or a different rate as determined by the Commissioner
19 pursuant to subdivision (2) of this subsection, of which one-half shall be
20 deducted from an employee's wages and one-half shall be paid by the
21 employee's employer.

1 ~~(2)(A) Notwithstanding subdivision (1) of this subsection, on or before~~
2 February 1 of the first year of each legislative biennium, the Commissioner
3 shall determine the rate of contribution necessary to provide Family Leave
4 Insurance benefits for the next two years at the rate set forth in subsection (f)
5 of this section. However, the rate of contribution determined by the
6 Commissioner shall not exceed one percent of each employee's wages.

7 (B) The new rate of contribution determined by the Commissioner
8 shall take effect on February 1 and shall remain in effect for two years.

9 (C) If the rate of contribution is equal to one percent of each
10 employee's wages and is insufficient to fund Family Leave Insurance benefits
11 at the rate set forth in subsection (f) of this section, the Commissioner shall
12 reduce the rate of Family Leave Insurance benefits to the extent necessary to
13 maintain the solvency of the Fund.

14 (d) The employer shall submit these contributions to the Commissioner in a
15 form and at times determined by the Commissioner.

16 (e) An employee shall file an application for Family Leave Insurance
17 benefits with the Commissioner under this section on a form provided by the
18 Commissioner. The Commissioner shall determine eligibility of the employee
19 based on the following criteria:

20 (1) The purposes for which the claim is made are documented.

21 ~~(2) The employee provided his or her employer with reasonable~~

1 advanced notice of the requested leave.

2 (f)(1) Except as otherwise provided pursuant to subsection (c) of this
3 section, an employee awarded Family Leave Insurance benefits under this
4 section shall receive the employee's average weekly wage or an amount equal
5 to a 40-hour workweek paid at a rate double that of the livable wage, as
6 determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is
7 less.

8 (2) An employee shall be entitled to no more than 12 weeks of Family
9 Leave Insurance benefits in a 12-month period.

10 (g) The Commissioner of Labor shall make a determination of each claim
11 no later than five days after the date the claim is filed, and Family Leave
12 Insurance benefits shall be paid from the Fund created pursuant to this section.
13 An employee or employer aggrieved by a decision of the Commissioner under
14 this subsection may file with the Commissioner a request for reconsideration
15 within 30 days after receipt of the Commissioner's decision. Thereafter, an
16 applicant denied reconsideration may file an appeal to the Civil Division of the
17 Superior Court in the county where the employment is located.

18 (h)(1) A self-employed person, including a sole proprietor or partner owner
19 of an unincorporated business, may elect to obtain coverage under the Family
20 Leave Insurance Program pursuant to this section for a period of three years by
21 filing a notice of his or her election with the Commissioner on a form provided

1 by the Commissioner.

2 (2) A person who elects coverage pursuant to this subsection may file a
3 claim for and receive Family Leave Insurance benefits pursuant to this section
4 after making six months of contributions to the Fund.

5 (3) A person who elects to obtain coverage pursuant to this subsection
6 shall:

7 (A) contribute a portion of his or her work income equal to the
8 amount established pursuant to subsection (c) of this section at times
9 determined by the Commissioner; and

10 (B) provide to the Commissioner any documentation of his or her
11 income or related information that the Commissioner determines is necessary.

12 (4) A person who elects coverage pursuant to this subsection may
13 terminate that coverage at the end of the three-year period by providing the
14 Commissioner with written notice of the termination at least 30 days before
15 the end of the period.

16 (i) A person who willfully makes a false statement or representation for the
17 purpose of obtaining any benefit or payment under the provisions of this
18 section, either for himself or herself or for any other person, after notice and
19 opportunity for hearing, may be assessed an administrative penalty of not more
20 than \$20,000.00 and shall forfeit all or a portion of any right to compensation
21 under the provisions of this section, as determined to be appropriate by the

1 ~~Commissioner after a determination by the Commissioner that the person has~~
2 willfully made a false statement or representation of a material fact.

3 (j)(1) An individual filing a claim for benefits pursuant to this section shall,
4 at the time of filing, be advised that:

5 (A) Family Leave Insurance benefits may be subject to income tax;

6 (B) requirements exist pertaining to estimated tax payments;

7 (C) the individual may elect to have income tax deducted and
8 withheld from the individual's benefits payment; and

9 (D) the individual may change a previously elected withholding
10 status.

11 (2) Amounts deducted and withheld from Family Leave Insurance
12 benefits shall remain in the Family Leave Insurance Special Fund until
13 transferred to the appropriate taxing authority at a payment of income tax.

14 (3) The Commissioner shall follow all procedures specified by the
15 federal Internal Revenue Service pertaining to the deducting and withholding
16 of income tax.

17 (k) The Commissioner may adopt rules as necessary to implement this
18 section.

19 Sec. 4. EFFECTIVE DATES

20 (a) This act shall take effect on January 1, 2018.

21 ~~(b) Employers shall begin deducting taxes from employees' wages on~~

1 ~~July 1, 2018, and beginning on January 1, 2019, employees may begin to~~
2 ~~receive benefits under this act.~~

Sec. 1. 21 V.S.A. § 471 is amended to read:

§ 471. DEFINITIONS

As used in this subchapter:

(1) “Employer” means an individual, organization or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State which for the purposes of parental leave, employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year and for the purposes of family leave, employs 15 or more individuals for an average of at least 30 hours per week during a year.

(2) “Employee” means a person who, in consideration of direct or indirect gain or profit, has been continuously employed by the same employer for a period of one year for an average of at least 30 hours per week is employed by an employer and has been employed in Vermont for at least six of the previous 12 months.

(3) “Family leave” means a leave of absence from employment by an employee who works for an employer which employs 15 or more individuals who are employed for an average of at least 30 hours per week during the year

~~for one of the following reasons:~~

~~(A) the serious illness of the employee; or~~

~~(B) the serious illness of the employee's child, stepchild or ward who lives with the employee, foster child, parent, grandparent, sibling, spouse, or parent of the employee's spouse;~~

~~(4) "Parental leave" means a leave of absence from employment by an employee who works for an employer which employs 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:~~

~~(C) the employee's pregnancy;~~

~~(D) the birth of the employee's child; or~~

~~(B)(E) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care.~~

~~(5)(4) "Serious illness" means an accident, disease, or physical or mental condition that:~~

~~(A) poses imminent danger of death;~~

~~(B) requires inpatient care in a hospital; or~~

~~(C) requires continuing in-home care under the direction of a physician.~~

~~(5) "Commissioner" means the Commissioner of Labor.~~

~~(6) "Worker" means a person who, in consideration of direct or indirect~~

~~gain or profit, performs services for an employer where the employer is unable
to show that:~~

~~(A) the person has been and will continue to be free from control or
direction over the performance of the services, both under the contract of
service and in fact;~~

~~(B) the service is either outside the usual course of business for the
employer for whom the service is performed, or outside all the places of
business of the employer for whom the service is performed; and~~

~~(C) the person is customarily engaged in an independently
established trade, occupation, profession, or business.~~

~~Sec. 2. 21 V.S.A. § 472 is amended to read:~~

~~§ 472. FAMILY LEAVE~~

~~(a) During any 12-month period, an employee shall be entitled to take
unpaid leave for a period not to exceed 12 weeks up to 12 weeks of paid family
leave using Family Leave Insurance benefits pursuant to section 472c of this
subchapter for the following reasons:~~

~~(1) for parental leave, during the employee's pregnancy and;~~

~~(2) following the birth of an the employee's child or;~~

~~(3) within a year following the initial placement of a child 16 years of
age or younger with the employee for the purpose of adoption, or foster care;~~

~~(2)(4) for family leave, for the serious illness of the employee, or~~

~~(5) the serious illness of the employee's child, stepchild or ward of the employee who lives with the employee, foster child, parent, grandparent, sibling, spouse, or parent of the employee's spouse.~~

~~(b) During the leave, at the employee's option, the employee may use accrued sick leave or vacation leave or any other accrued paid leave, not to exceed six weeks. ~~Utilization~~ Use of accrued paid leave shall not extend the leave provided ~~herein~~ by this section.~~

~~(c) The employer shall continue employment benefits for the duration of the family leave at the level and under the conditions coverage would be provided if the employee continued in employment continuously for the duration of the leave. The employer may require that the employee contribute to the cost of the benefits during the leave at the employee's existing rate of employee contribution.~~

~~(d) The employer shall post and maintain in a conspicuous place in and about each of ~~his or her~~ its places of business printed notices of the provisions of this subchapter on forms provided by the Commissioner of Labor.~~

~~(e)(1) An employee shall give his or her employer reasonable written notice of intent to take family leave under this subchapter. Notice shall include the date the leave is expected to commence and the estimated duration of the leave.~~

~~(2) In the case of the adoption or birth of a child, an employer shall not~~

~~require that notice be given more than six weeks prior to the anticipated commencement of the leave.~~

~~(3) In the case of an unanticipated serious illness or premature birth, the employee shall give the employer notice of the commencement of the leave as soon as practicable.~~

~~(4) In the case of serious illness of the employee or a member of the employee's family, an employer may require certification from a physician to verify the condition and the amount and necessity for the leave requested.~~

~~(5) An employee may return from leave earlier than estimated upon approval of the employer.~~

~~(6) An employee shall provide reasonable notice to the employer of his or her need to extend the leave to the extent provided by this chapter.~~

~~(f) Upon return from leave taken under this subchapter, an employee shall be offered An employer shall offer an employee who has been employed by the employer for at least 12 months and is returning from family leave taken under this subchapter the same or a comparable job at the same level of compensation, employment benefits, seniority, or any other term or condition of the employment existing on the day the family leave began. This subchapter shall not apply if, prior to requesting leave, the employee had been given notice or had given notice that the employment would terminate. This subsection shall not apply if the employer can demonstrate by clear and~~

~~convincing evidence that:~~

~~(1) during the period of leave, the employee's job would have been terminated or the employee laid off for reasons unrelated to the leave or the condition for which the leave was granted; or~~

~~(2) the employee performed unique services and hiring a permanent replacement during the leave, after giving reasonable notice to the employee of intent to do so, was the only alternative available to the employer to prevent substantial and grievous economic injury to the employer's operation.~~

~~(g) An employer may adopt a leave policy more generous than the leave policy provided by this subchapter. Nothing in this subchapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or any employment benefit program or plan which provides greater leave rights than the rights provided by this subchapter. A collective bargaining agreement or employment benefit program or plan may not diminish rights provided by this subchapter. Notwithstanding the provisions of this subchapter, an employee may, at the time a need for parental or family leave arises, waive some or all the rights under this subchapter provided the waiver is informed and voluntary and any changes in conditions of employment related to any waiver shall be mutually agreed upon between employer and employee.~~

~~(h) Except for serious illness of the employee, an employee who does not~~

~~return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Family Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.~~

Sec. 3. 21 V.S.A. § 472c is added to read:

§ 472c. FAMILY LEAVE INSURANCE; SPECIAL FUND;

ADMINISTRATION

(a) The Family Leave Insurance Program is established in the Department of Labor for the provision of Family Leave Insurance benefits to eligible employees pursuant to this section.

(b) The Family Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the Commissioner for the administration of the Family Leave Insurance Program and payment of Family Leave Insurance benefits provided pursuant to this section.

(c)(1)(A) The Fund shall consist of contributions equal to 0.93 percent of each worker's wages, which an employer shall deduct and withhold from each of its workers' wages.

(B) An employer may elect to pay all or a portion of the contributions due from its workers' wages.

~~(2)(4) Notwithstanding subdivision (1) of this subsection, the General Assembly shall annually establish the rate of contribution for the next fiscal year. The rate shall equal the amount necessary to provide Family Leave Insurance benefits pursuant to subsection (f) of this section and to administer the Family Leave Insurance Program during the next fiscal year, adjusted by any balance in the fund from the prior fiscal year.~~

~~(B)(i) On or before February 1 of each year, the Commissioner shall report to the General Assembly the rate of contribution necessary to provide Family Leave Insurance benefits pursuant to subsection (f) of this section and to administer the Program during the next fiscal year, adjusted by any balance in the fund from the prior fiscal year.~~

~~(ii) The proposed rate of contribution determined by the Commissioner shall not exceed one percent of each worker's wages. If that amount is insufficient to fund Family Leave Insurance benefits at the rate set forth in subsection (f) of this section, the Commissioner's report shall include a recommendation of the amount by which to reduce Family Leave Insurance benefits in order to maintain the solvency of the Fund without increasing the proposed rate of contribution above one percent.~~

~~(d) An employer shall submit these contributions to the Commissioner in a form and at times determined by the Commissioner.~~

~~(e) An employee shall file an application for Family Leave Insurance~~

~~benefits with the Commissioner under this section on a form provided by the Commissioner. The Commissioner shall determine eligibility of the employee based on the following criteria:~~

~~(1) The purposes for which the claim is made are documented.~~

~~(2) The employee satisfies the eligibility requirements for the requested leave.~~

~~(f)(1) Except as otherwise provided pursuant to subsection (c) of this section, an employee awarded Family Leave Insurance benefits under this section shall receive the employee's average weekly wage or an amount equal to a 40-hour workweek paid at a rate double that of the livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is less.~~

~~(2) An employee shall be entitled to no more than 12 weeks of Family Leave Insurance benefits in a 12-month period.~~

~~(g) The Commissioner of Labor shall make a determination of each claim no later than five days after the date the claim is filed, and Family Leave Insurance benefits shall be paid from the Fund created pursuant to this section. An employee or employer aggrieved by a decision of the Commissioner under this subsection may file with the Commissioner a request for reconsideration within 30 days after receipt of the Commissioner's decision. Thereafter, an applicant denied reconsideration may file an appeal~~

to the Civil Division of the Superior Court in the county where the employment is located.

(h)(1) A self-employed person, including a sole proprietor or partner owner of an unincorporated business, may elect to obtain coverage under the Family Leave Insurance Program pursuant to this section for a period of three years by filing a notice of his or her election with the Commissioner on a form provided by the Commissioner.

(2) A person who elects coverage pursuant to this subsection may file a claim for and receive Family Leave Insurance benefits pursuant to this section after making six months of contributions to the Fund.

(3) A person who elects to obtain coverage pursuant to this subsection shall:

(A) contribute a portion of his or her work income equal to the amount established pursuant to subsection (c) of this section at times determined by the Commissioner; and

(B) provide to the Commissioner any documentation of his or her income or related information that the Commissioner determines is necessary.

(4)(A) A person who elects coverage pursuant to this subsection may terminate that coverage at the end of the three-year period by providing the Commissioner with written notice of the termination at least 30 days before the end of the period.

~~(B) If a person who elects coverage pursuant to this subsection does not terminate it at the end of the initial three-year period, he or she may terminate the coverage at the end of any succeeding annual period by providing the Commissioner with written notice of the termination at least 30 days before the end of the period.~~

~~(C) Notwithstanding subdivisions (A) and (B) of this subdivision (h)(4), a person who, after electing to obtain coverage pursuant to this subsection, becomes a worker or stops working in Vermont, may elect to terminate the coverage pursuant to this subsection by providing the Commissioner with 30 days' written notice in accordance with rules adopted by the Commissioner.~~

~~(D) Nothing in this subsection shall be construed to prevent an individual who is both a worker and self-employed from electing to obtain coverage pursuant to this subsection.~~

~~(i) A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment or to avoid payment of any required contributions under the provisions of this section, either for himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to compensation under the provisions of this section, as determined to be appropriate by the Commissioner after a~~

~~determination by the Commissioner that the person has willfully made a false statement or representation of a material fact.~~

~~(j)(1) An individual filing a claim for benefits pursuant to this section shall, at the time of filing, be advised that:~~

~~(A) Family Leave Insurance benefits may be subject to income tax;~~

~~(B) requirements exist pertaining to estimated tax payments;~~

~~(C) the individual may elect to have income tax deducted and withheld from the individual's benefits payment; and~~

~~(D) the individual may change a previously elected withholding status.~~

~~(2) Amounts deducted and withheld from Family Leave Insurance benefits shall remain in the Family Leave Insurance Special Fund until transferred to the appropriate taxing authority as a payment of income tax.~~

~~(3) The Commissioner shall follow all procedures specified by the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.~~

~~(k) The Commissioner may adopt rules as necessary to implement this section.~~

Sec. 4. RULEMAKING

~~On or before January 1, 2018, the Commissioner of Labor shall adopt rules necessary to implement the Paid Family Leave Program, including rules~~

~~governing the process by which a person who has elected to obtain coverage under the Family Leave Insurance Program pursuant to 21 V.S.A. § 472c(h) and subsequently becomes a worker or stops working in Vermont may terminate that coverage.~~

Sec. 5. EDUCATION AND OUTREACH

~~On or before January 1, 2018, the Commissioner of Labor shall develop and make available on the Department of Labor's website information and materials to educate and inform employers and employees about the Family Leave Insurance Program established pursuant to 21 V.S.A. § 472c.~~

Sec. 6. EFFECTIVE DATES

~~(a) This section and Secs. 3, 4, and 5 shall take effect on July 1, 2017.~~

~~(b) In Sec. 1, 21 V.S.A. 471, subdivision (6) shall take effect on July 1, 2017. The remaining provisions of Sec. 1 shall take effect on July 1, 2019.~~

~~(c) Sec. 2 shall take effect on July 1, 2019.~~

~~(d) Contributions from employers and employees shall begin being paid pursuant to 21 V.S.A. § 472c(c) and (d) on July 1, 2018, and, beginning on July 1, 2019, employees and self-employed persons may begin to receive benefits pursuant to 21 V.S.A. § 472c.~~

Sec. 1. 21 V.S.A. § 471 is amended to read:

§ 471. DEFINITIONS

As used in this subchapter:

(1) “Employer” means an individual, organization or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State ~~which for the purposes of parental leave, that employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year and for the purposes of family leave, employs 15 or more individuals for an average of at least 30 hours per week during a year.~~

** * **

(3) “Family leave” means a leave of absence from employment by an employee who works for an employer which employs ~~15~~ 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:

(A) the serious illness of the employee; or

(B) the serious illness of the employee’s child, stepchild or ward who lives with the employee, foster child, grandchild, parent, grandparent, sibling, spouse, or parent of the employee’s spouse;

~~(4) “Parental leave” means a leave of absence from employment by an employee who works for an employer which employs 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:~~

(C) the employee's pregnancy;

(A)(D) the birth of the employee's child;

(B)(E) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care; or

(F) the birth of the employee's grandchild if the employee is the primary caregiver or guardian of the child and the child's biological parents are not taking a family leave for the birth pursuant to section 472 of this chapter.

(5)(4) "Serious illness" means an accident, disease, or physical or mental condition that:

* * *

(5) "Commissioner" means the Commissioner of Labor.

Sec. 2. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

(a) During any 12-month period, an employee shall be entitled to take unpaid leave for a period not to exceed 12 weeks for the following reasons:

(1) for parental leave, during the employee's pregnancy and;

(2) following the birth of an ~~an~~ the employee's child or;

(3) within a year following the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption, or foster care;

(4) within a year following the birth of the employee's grandchild if the

employee is the primary caregiver or guardian of the child and the child's biological parents are not taking a leave for the birth pursuant to this section;

(2)(5) for family leave, for the serious illness of the employee; or

(6) the serious illness of the employee's child, stepchild or ward of the employee who lives with the employee, foster child, grandchild, parent, grandparent, sibling, spouse, or parent of the employee's spouse.

(b) During the leave, at the employee's option, the employee may use accrued sick leave or vacation leave or any other accrued paid leave, not to exceed six weeks Parental and Family Leave Insurance benefits pursuant to subchapter 13 of this chapter; or short-term disability insurance or other insurance benefits. Utilization Use of accrued paid leave, Parental and Family Leave Insurance benefits, or insurance benefits shall not extend the leave provided herein by this section.

* * *

(d) The employer shall post and maintain in a conspicuous place in and about each of his or her its places of business printed notices of the provisions of this subchapter on forms provided by the Commissioner of Labor.

(e)(1) An employee shall give his or her employer reasonable written notice of intent to take family leave under this subchapter. Notice shall include the date the leave is expected to commence and the estimated duration of the leave.

(2) In the case of the adoption or birth of a child, an employer shall not require that notice be given more than six weeks prior to the anticipated commencement of the leave.

(3) In the case of an unanticipated serious illness or premature birth, the employee shall give the employer notice of the commencement of the leave as soon as practicable.

(4) In the case of serious illness of the employee or a member of the employee's family, an employer may require certification from a physician to verify the condition and the amount and necessity for the leave requested.

(5) An employee may return from leave earlier than estimated upon approval of the employer.

(6) An employee shall provide reasonable notice to the employer of his or her need to extend the leave to the extent provided by this chapter.

* * *

(h) Except for serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Parental and Family Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.

Sec. 3. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Parental and Family Leave Insurance

§ 571. DEFINITIONS

(a) As used in this subchapter:

(1) “Employee” means an individual who performs services in employment for an employer.

(2) “Employer” means an individual, organization, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State.

(3) “Employment” has the same meaning as in subdivision 1301(6) of this title.

(4) “Family leave” means a leave of absence from employment by an employee for the serious illness of the employee’s child, stepchild or ward who lives with the employee, foster child, grandchild, parent, grandparent, sibling, spouse, or parent of the employee’s spouse.

(5) “Parental and bonding leave” means a leave of absence from employment by an employee for:

(A) the birth of the employee’s child;

(B) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care; or

(C) the purpose of bonding with the employee’s grandchild if the

leave is taken within a year following the birth of the employee's grandchild, the employee is the primary caregiver or guardian of the child, and the child's biological parents are not using Parental and Family Leave Insurance Benefits for parental and bonding leave in relation to the birth.

(6) "Qualified employee" means an individual that has been an employee during at least 12 of the previous 13 months.

(7) "Serious illness" means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

(C) requires continuing in-home care under the direction of a physician.

(8) "Wages" has the same meaning as in subdivision 1301(12) of this title.

§ 572. PARENTAL AND FAMILY LEAVE INSURANCE; SPECIAL

FUND; ADMINISTRATION

(a) The Parental and Family Leave Insurance Program is established in the Department of Labor for the provision of Parental and Family Leave Insurance benefits to eligible employees pursuant to this section.

(b) The Parental and Family Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by

the Commissioner for the administration of the Parental and Family Leave Insurance Program and payment of Parental and Family Leave Insurance benefits provided pursuant to this section.

(c)(1)(A) The Fund shall consist of contributions equal to 0.141 percent of each employee's covered wages, which an employer shall deduct and withhold from each of its employee's wages.

(B) In lieu of deducting and withholding the full amount of the contribution pursuant to subdivision (1)(A) of this subsection, an employer may elect to pay all or a portion of the contributions due from the employee's covered wages.

(C) As used in this subsection, the term "covered wages" does not include the amount of wages paid to an employee after he or she has received wages equal to \$150,000.00.

(2)(A) Notwithstanding subdivision (1) of this subsection (c), the General Assembly shall annually establish the rate of contribution for the next fiscal year. The rate shall equal the amount necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain a reserve equal to at least 100 percent of the projected benefit payments for the next fiscal year; and to administer the Parental and Family Leave Insurance Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

(B) On or before February 1 of each year, the Commissioner shall report to the General Assembly the rate of contribution necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain ~~adequate reserves in the Fund~~ a reserve equal to at least 100 percent of the projected benefit payments for the next fiscal year, and to administer the Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

(d) An employer shall submit these contributions to the Commissioner in a form and at times determined by the Commissioner.

§ 573. BENEFITS

(a) Except as otherwise provided pursuant to section 572 of this subchapter, a qualified employee awarded Parental and Family Leave Insurance benefits under this section shall receive 80 percent of his or her average weekly wage or an amount equal to a 40-hour workweek paid at a rate double that of the livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is less.

(b) A qualified employee shall be permitted to receive not more than six weeks of Parental and Family Leave Insurance benefits in a 12-month period for family leave or parental and bonding leave, or both.

§ 574. APPLICATION FOR BENEFITS; PAYMENT; TAX WITHHOLDING

(a) A qualified employee shall file an application for Parental and Family

Leave Insurance benefits with the Commissioner under this section on a form provided by the Commissioner. The Commissioner shall determine whether the qualified employee is eligible to receive Parental and Family Leave Insurance benefits based on the following criteria:

(1) The purposes for which the claim is made are documented.

(2) The qualified employee satisfies the eligibility requirements for the requested leave.

(3) The benefits are being requested in relation to a family leave or a parental and bonding leave.

(b) The Commissioner of Labor shall make a determination of each claim not later than five business days after the date the claim is filed, and Parental and Family Leave Insurance benefits shall be paid from the Fund created pursuant to this section. A person aggrieved by a decision of the Commissioner under this subsection may file with the Commissioner a request for reconsideration within 30 days after receipt of the Commissioner's decision. Thereafter, an applicant denied reconsideration may file an appeal to the Civil Division of the Superior Court in the county where the employment is located.

(c)(1) An individual filing a claim for benefits pursuant to this section shall, at the time of filing, be advised that Parental and Family Leave Insurance benefits may be subject to income tax and that the individual's

benefits may be subject to withholding.

(2) The Commissioner shall follow all procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax.

§ 575. FALSE STATEMENT OR REPRESENTATION; PENALTY

A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment or to avoid payment of any required contributions under the provisions of this section, either for himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to compensation under the provisions of this section, as determined to be appropriate by the Commissioner after a determination by the Commissioner that the person has willfully made a false statement or representation of a material fact.

§ 576. RULEMAKING

The Commissioner may adopt rules as necessary to implement this subchapter.

Sec. 4. ADOPTION OF RULES

On or before January 1, 2018, the Commissioner of Labor shall adopt rules necessary to implement 21 V.S.A. chapter 5, subchapter 13.

Sec. 5. EDUCATION AND OUTREACH

On or before January 1, 2018, the Commissioner of Labor shall develop and make available on the Department of Labor's website information and materials to educate and inform employers and employees about the Parental and Family Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

~~Sec. 6. EFFECTIVE DATES~~

- ~~(a) This section and Secs. 3, 4, and 5 shall take effect on July 1, 2017.~~
- ~~(b) Secs. 1 and 2 shall take effect on July 1, 2019.~~
- ~~(c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on July 1, 2018, and, beginning on July 1, 2019, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.~~

Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE

INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL
FUND

Beginning on July 1, 2017, the Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Parental and Family Leave Insurance Special Fund necessary to establish the Parental and Family Leave Insurance Program in anticipation of the receipt on or after July 1, 2018 of contributions submitted pursuant to 21 V.S.A. § 572.

Sec. 7. ADEQUACY OF RESERVES; REPORT

Annually, on or before January 15, 2020, 2021, and 2022, the Commissioner of Labor, in consultation with the Commissioners of Finance and Management and of Financial Regulation, shall submit a written report to the House Committees on Appropriations, on General, Housing and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance regarding the amount and adequacy of the reserves in the Parental and Family Leave Insurance Special Fund and any recommendations for legislative action necessary to ensure that an adequate reserve is maintained in the Fund.

~~Sec. 8. EFFECTIVE DATES~~

- ~~(a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2017.~~
- ~~(b) Secs. 1 and 2 shall take effect on October 1, 2019.~~
- ~~(c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on July 1, 2018, and, beginning on October 1, 2019, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.~~

Sec. 8. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

- (a) An individual shall be disqualified for benefits:

* * *

- (5) For any week with respect to which the individual is receiving or has

received remuneration in the form of:

* * *

(F) Parental and Family Leave Insurance benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

* * *

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2017.

(b) Secs. 1, 2, and 8 shall take effect on October 1, 2019.

(c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on July 1, 2018, and, beginning on October 1, 2019, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.